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STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR
STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2007-2

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA - MODESTO DIVISION

In re

MICHAEL JAMES WAGNER AND
BEVERLEY ANNE WAGNER,

Debtors.

Case No. 09-91246

Chapter 7

D.C. No. PD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

CITIBANK, N.A., AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF
STRUCTURED ASSET MORTGAGE
INVESTMENTS II INC., BEAR STEARNS
ALT-A TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2007-
2,

Movant,

vs.

MICHAEL JAMES WAGNER AND
BEVERLEY ANNE WAGNER, Debtors;
GARY FARRAR, Chapter 7 Trustee,

Respondents.

LBR 4001-1 and 9014-1(f)(1)

DATE: July 29, 2009
TIME: 10:30 a.m.
CTRM: 34

1200 I Street, Suite 4
Modesto, CA 95354

Citibank, N.A., as Trustee for the Certificateholders of Structured Asset Mortgage
Investments II Inc., Bear Stearns ALT-A Trust, Mortgage Pass-Through Certificates, Series 2007-2

1 ("Movant"), moves this court for an order terminating the automatic stay of 11 U.S.C. § 362 as to
2 Movant, so that Movant may commence and continue all acts necessary to enforce its security
3 interest in real property generally described as 215 Bartons Way, Santa Rosa Beach, Florida 32459.

4 On or about May 1, 2009, Michael James Wagner and Beverley Anne Wagner ("Debtors")
5 filed a voluntary petition under Chapter 7 of the Bankruptcy Code, and Gary Farrar was appointed as
6 Chapter 7 Trustee. As a result of said filing, certain acts and proceedings against Debtors and the
7 bankruptcy estate are stayed as provided in 11 U.S.C. § 362.

8 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I.**

11 **MOVANT IS ENTITLED TO RELIEF FROM THE**
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).

12 **NO EQUITY**

13
14 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the
15 debtor does not have any equity in the property and the property is not necessary to the debtor's
16 effective reorganization.

17 In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:

18 § 362(d)(2) reflects congressional intent to allow creditors to
19 immediately proceed against the property where the debtor has no
20 equity and it is unnecessary to the reorganization, even where the
debtor can provide adequate protection under § 362(d)(1). (Emphasis
added).

21 Id. at 610 (emphasis added).

22 In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated that
23 in determining whether equity exists in the property for purposes of § 362(d)(2), all encumbrances
24 are totalled, whether or not all the lienholders have joined in the request for relief from stay. The
25 Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th Cir. 1984).

26 An appropriate cost of sale factor should also be added to determine if the debtor has any
27 equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289
28 (Bankr. S.D. Cal. 1982).

1 On or about January 11, 2007, Beverley Anne Wagner ("Borrower"), for valuable considera-
2 tion, made, executed and delivered to CTX Mortgage Company, LLC ("Lender") a Note in the
3 principal sum of \$860,000.00 (the "Note"). Pursuant to the Note, Borrower is obligated to make
4 monthly principal and interest payments commencing February 1, 2007, and continuing until January
5 1, 2037, when all outstanding amounts are due and payable. The Note provides that, in the event of
6 default, the holder of the Note has the option of declaring all unpaid sums immediately due and
7 payable. A true and correct copy of the Note is attached to the concurrently served and filed Exhibits
8 to the Declaration in Support of Motion for Relief From Automatic Stay ("Exhibits") as exhibit A
9 and incorporated herein by reference.

10 On or about January 11, 2007, the Borrower made, executed and delivered to Lender a Deed
11 of Trust (the "Deed of Trust") granting Lender a security interest in real property commonly
12 described as 215 Bartons Way, Santa Rosa Beach, Florida 32459 (the "Real Property"), which is
13 more fully described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs
14 incurred as a result of the Debtors' bankruptcy case may be included in the outstanding balance
15 under the Note. The Deed of Trust was recorded on January 24, 2007, in the Official Records of
16 Walton County, State of Florida. A true and correct copy of the Deed of Trust is attached to the
17 Exhibits as exhibit B and incorporated herein by reference.

18 Subsequently, Lender's beneficial interest in the Note and the Deed of Trust was sold,
19 assigned and transferred to Movant. A true and correct copy of the Corporation Assignment of Deed
20 of Trust evidencing the Assignment of the Note and Deed of Trust to Movant is attached to the
21 Exhibits as exhibit C and incorporated herein by reference.

22 The obligation under the Note is in default as of June 1, 2007, for failure to make payments
23 to Movant. As of May 27, 2009, the total obligation due and owing under the Note is in the
24 approximate amount of \$1,020,519.59, representing the principal balance of \$860,000.00, interest in
25 the sum of \$140,274.24, late charges in the amount of \$846.57, escrow advances in the amount of
26 \$15,897.53, and recoverable fees of \$3,501.25. This is an approximate amount for purposes of this
27 Motion only, and should not be relied upon as such to pay off the subject loan as interest and
28 additional advances may come due subsequent to the filing of the Motion. An exact payoff amount

1 can be obtained by contacting Movant's counsel. Further, Movant has incurred additional post-
2 petition attorneys' fees and costs in bringing the instant Motion. Moreover, the total arrears under the
3 Note are in the approximate sum of \$161,458.42, excluding the post-petition attorneys' fees and costs
4 incurred in filing the instant Motion.

5 **II.**

6 **RELIEF FROM STAY**

7 **LACK OF EQUITY**

8 Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and
9 Statements, the fair market value of the Property is approximately \$550,000.00. True and correct
10 copies of the Debtors' bankruptcy Schedules "A" and "D" are collectively attached to the Exhibits as
11 exhibit D and incorporated herein by reference.

12 Based on the above, Movant maintains that the equity in the Property is as follows:

13	Fair Market Value:	\$550,000.00
14	Less:	
	Movant's Trust Deed	\$1,020,519.59
15	Ctx Mortgage Company's 2 nd Trust Deed	\$199,713.00
	Costs of Sale (8%)	<u>\$44,000.00</u>
16	Equity in the Property:	\$<714,232.59>

17 As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this
18 is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to
19 relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

20 **III.**

21 **MOVANT IS ENTITLED TO RELIEF FROM THE**
22 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).**

23 **CAUSE - LACK OF ADEQUATE PROTECTION**

24 Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to adequate
25 protection of its interest in the Property.

26 Movant submits that adequate protection in this case requires normal and periodic cash
27 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to
28 Movant, including all attorneys' fees and costs incurred in the filing of this motion.

1 Movant is informed and believes that Debtors are presently unwilling or unable to provide
2 adequate protection to the Movant and there is no probability that adequate protection can be
3 afforded to Movant within a reasonable time.

4 By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C.
5 § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

6 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

7 1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the enforcement by
8 Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

9 2. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

10 3. Granting Movant leave to foreclose on the Real Property and to enforce the security
11 interest under the Note and the Deed of Trust, including any action necessary to obtain possession of
12 the Property;

13 4. Permitting Movant to offer and provide Debtors with information re: a potential
14 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
15 Mitigation Agreement, and to enter into such agreement with Debtors;

16 5. Alternatively, in the event this court declines to grant Movant the relief requested
17 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
18 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
19 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay
20 when due (a) the monthly installments of principal and interest, as required under the Note;
21 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in order to
22 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the
23 filing of this motion;

24 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion be
25 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law; and

26 /././

27 /././

28 /././

7. For such other and further relief as the court deems just and proper.

Dated: July 1, 2009

PITE DUNCAN, LLP

/s/ Erin L. Laney (CA SBN 259863)

ERIN L. LANEY

Attorneys for CITIBANK, N.A., AS TRUSTEE FOR
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